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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CHARLES BAILEY, SR.,

Plaintiff and Appellant,

v.

BOARD OF ADMINISTRATION OF THE
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM,

Defendant and Respondent.

F048727

(Super. Ct. No. 04CECG02085)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Rosendo Pena, Judge.

Charles Bailey, Sr., in pro. per., for Plaintiff and Appellant.

Peter H. Mixon and Wesley E. Kennedy for Defendant and Respondent.

-ooOoo-

Appellant Charles Bailey, Sr., applied for a disability retirement from his job as a correctional officer, which was denied. He contends the evidence supports his claim of disability and this court must direct the issuance of a writ of mandate. We disagree and will affirm.

FACTUAL AND PROCEDURAL SUMMARY

Bailey commenced working as a correctional officer at Corcoran State Prison in February 1995. In February 2000, he was transferred to the women's correctional facility in Chowchilla, where he worked until June 13, 2001. As of June 13, 2001, Bailey was on disability leave.

On April 26, 2002, Bailey filed an application with the California Public Employees' Retirement System (CalPERS) seeking a disability retirement. By letter dated February 18, 2003, CalPERS notified Bailey that his request for disability retirement was denied.

Bailey pursued an administrative appeal of the denial of a disability retirement. A full hearing on the administrative appeal was held on January 8, 2004. The proposed decision of the administrative law judge found that Bailey was suffering from chronic depression, but that this psychological condition did not prevent him from performing the duties of a correctional officer. The administrative law judge denied the application for a disability retirement. The CalPERS Board of Administration adopted the proposed decision of the administrative law judge on May 19, 2004.

On July 16, 2004, Bailey filed a petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5¹ with the Fresno County Superior Court. On March 25, 2005, the trial court denied the petition.

DISCUSSION

Standard of review

In reviewing an administrative law decision, the trial court conducts an independent review. (§ 1094.5, subd. (c); *County of Alameda v. Board of Retirement* (1988) 46 Cal.3d 902, 909.) Under this standard, there is a presumption of correctness

¹ All further statutory references are to the Code of Civil Procedure unless otherwise specified.

concerning the administrative findings of fact and the party challenging the decision has the burden of establishing that the administrative findings are contrary to the weight of the evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812, 817.)

If the trial court has conducted an independent review, the appellate court is obligated to uphold the trial court's decision if the findings are supported by substantial evidence. (*County of Alameda v. Board of Retirement, supra*, 46 Cal.3d at p. 910.) Here, the trial court applied the independent standard of review. We review the trial court's decision, therefore, to see if it was supported by substantial evidence. (*Ibid.*) On appeal, Bailey has the burden of proving there was no substantial evidence to support the trial court's decision. (*Vernon Fire Fighters Assn. v. City of Vernon* (1986) 178 Cal.App.3d 710, 718.)

In undertaking a review of the trial court's decision to determine if it was supported by substantial evidence, this court views the evidence in the light most favorable to the decision and resolves all conflicts in favor of upholding the decision. We do not reweigh the evidence. (*Duncan v. Department of Personnel Administration* (2000) 77 Cal.App.4th 1166, 1174 & fn. 6.)

Neither party requested a statement of decision. When there is no statement of decision, the appellate court presumes every finding of fact, which is warranted by the evidence, necessary to support the judgment. (*Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, 1840.) In this case, however, the trial court's ruling sets forth its factual findings, conclusions, and rationale, essentially providing us with the equivalent of a statement of decision.

Analysis

In order to qualify for a disability retirement, Bailey was required to show that he was incapacitated physically or mentally for the performance of his duties as a correctional officer. (Gov. Code, § 21156.) Incapacity for performance of duty means a

disability of permanent or extended and uncertain duration, as established by competent medical evidence. (Gov. Code, § 20026.)

The trial court had before it the evaluations of Bailey by three medical experts. Dr. Thomas Callahan, a psychiatrist, reviewed Bailey's medical records, the duty description of a correctional officer, and conducted interviews of Bailey. Callahan noted that Bailey expressed only negative feelings about his experience as a correctional officer and resisted returning to his job. Callahan found that Bailey did not exhibit evidence of poor memory or concentration, was minimally depressed, and there were no signs of agitation. Callahan concluded that Bailey's "current work function impairments [were] minimal," and he was not "substantially incapacitated for performance of his duties" as a correctional officer.

Drs. Alan J. Drucker, a psychiatrist, and Denise M. Novell, a clinical psychologist, both concluded that Bailey was incapacitated for the performance of his duties because he was suffering from depression. Novell opined that Bailey was suffering from mild depression and acknowledged that a "major consideration" in her diagnosis was that Bailey did not want to return to work as a correctional officer. Drucker based his diagnosis primarily upon his interview with Bailey, including Bailey's statements that he had suffered from depression for a number of years, while noting that Bailey exhibited "minimal objective evidence of either anxiety or depression."

Bailey testified that he was physically active, walking and riding a bike for exercise, and performing the everyday duties of parenting a teenager. He also testified that he did not have a "good feeling" about the thought of going back to work.

There was a conflict in the evidence in that the medical opinions differed in their conclusions. When the evidence is in conflict, we resolve the conflict in favor of upholding the decision of the trial court. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.)

Callahan's testimony and diagnosis, combined with Bailey's own testimony that he was capable of engaging in everyday activities, physical exercise, and did not have a good feeling about returning to work, constitute substantial evidence supporting the trial court's decision. (*Duncan v. Department of Personnel Administration, supra*, 77 Cal.App.4th at p. 1174 & fn. 6.)

DISPOSITION

The judgment is affirmed.

CORNELL, J.

WE CONCUR:

HARRIS, Acting P.J.

WISEMAN, J.